



10 August 2018

**Report by Trevor Slater, Client Director of Financial Dispute Resolution Service to the Hon. Kris Faafoi, Minister for Commerce and Consumer Affairs, on the recommendations contained in the 2018 Independent Review undertaken by Orb Solutions.**

Introduction

Simon Roughton from Orb Solutions completed his review of the Scheme and stated the following:

“The reviewer can confirm that Financial Dispute Resolution Service [FDRS] is a successful and professionally run scheme which provides an effective and efficient service to users of its service. It complies with the provisions as set out in s.52 as mandatory considerations for approval and s.63 of the Financial Service Provider (Registration and Dispute Resolution) Act 2008 which prescribes the rules that need to be included in an approved Dispute Resolution Scheme.”

He added:

“FDRS is one of four financial Dispute Resolution Schemes in New Zealand and 16% of the financial service providers belong to the FDRS scheme. Therefore, any recommendations made, are done so within the context of this scheme relative to the size of its operation. I wish to note that a number of the recommendations are not new insights to both the current and immediate past client director, who had already started making changes to the scheme to ensure it continues to meet the requirements of the Act and the principle of being a user focused service.”

The Reviewer identified a number of areas of priority for further development. This document addresses those recommendations.

The Reviewer suggested the following priority areas for development of the Scheme:

- Review and update the scheme rules.
- Develop systems for more effective data collection.
- Take a more proactive approach to members providing leadership on best practice complaint resolution procedures and ensuring compliance, when necessary.
- Tighten up the role and function of the Advisory Council to provide further level of independence for the scheme.
- Create a process manual to increase consistency of approach.
- Ensure scheme is adequately resourced to ensure areas of priority are achieved.

The Reviewer also made some observations and comments in relation to the Benchmark Principles contained in the Act. These are commented on later in this document.

In principle, all of these recommendations are accepted. However, there are a number of details of these recommendations that are not acceptable or have already been completed or commenced and as such require commenting on.

## Responses

### **Review and Update Scheme Rules**

This recommendation is generally accepted and had already been identified as an action that needs to be undertaken.

The following specific recommendations are fully accepted:

- Wait for finalisation of the Financial Services Legislative Amendment Bill (FSLAB) before requesting that Ministers consider a change of rules, as required under s.66 of the Act.
  - *Comment: Based on current timelines for implementation of FSLAB this would see the start of the drafting of new Scheme Rules in mid 2019.*
- Changing the focus of the Rules to better reflect the Scheme contributing to improvements in both complaint handling and service delivery within the industry being overseen.
  - *Comment: This 'theme' will be taken into consideration when drafting the new Rules.*
- Determining jurisdiction of a complaint should rest with the Client Director on the proviso that a user of the service has the right to have the adjudicator make a determination on jurisdiction, if requested.
  - *Comment: This will bring the Scheme into line with other dispute resolution schemes and is far more practical than the current process.*

The following specific recommendations are not accepted (or partly accepted). The reasons are explained in my comments on each point:

- Including in the Core Functions of the Scheme section the principle of 'user focused' alongside the principles of accessibility, independence, fairness, accountability, efficiency and effectiveness in determining the scheme rules.
  - *Comment: The requirements for approval of a Scheme are set in legislation and do not include 'user focused'. I also note this principle is not included in any of the other approved dispute resolution schemes. As such I am of the view it should not be included in the Core Functions section of the Scheme Rules. Having said that the Scheme does operate on a 'user focused' basis and reference to this could be included in an introduction section of the*

*Scheme Rules or in other Scheme documents, such as the overview on our website.*

## **Develop Systems for more effective data collection**

It is agreed that the Scheme data collection methods need improving.

The following specific recommendations are fully accepted:

- FDRS should explore ways to better collect and analyse data from enquiries and complaints.
  - *Comment: The methods of data collection are partly manual and partly obtained from our IT data base. However, the technology is outdated and in the process of being updated. This will provide better data and allow improved analysis. The timetable for these system improvements is by mid 2019.*

The following specific recommendations are not accepted (or partly accepted). The reasons are explained in my comments on each point:

- That the FairWay Board consider a requirement under the Scheme Rules for members to provide meaningful data to the Scheme on its internal complaints, to improve overall complaint handling.
  - *Comment: As we know the conditions approval for an external dispute resolution scheme are contained in Part 3 of the Financial Service Providers (Registration and Dispute Resolution) Act 2008.*

*In Part 3 it states “The purpose of this Part is to promote confidence in financial service providers by improving consumers’ access to redress from providers through schemes to resolve disputes. The schemes are intended to be accessible, independent, fair, accountable, efficient, and effective.*

*I am unsure how compelling members of the Scheme to commence capturing all complaint data, regardless of the size of their financial business, and setting up a system to then report to the Scheme goes towards the purpose of an external dispute resolution scheme.*

*Doing so would create a great deal of work, especially for larger members, the cost of which would ultimately be passed on to their clients.*

*As stated by the Reviewer, Financial Dispute Resolution Service has about 16% market share. To the best of my knowledge such data collection is not done by other schemes and at only 16% of the industry covered the data would be incomplete and not a good measure.*

*Having said that it may be an area the combined dispute resolution schemes could consider in a practical way and I intend to raise at one of our combined meetings.*

*This recommendation is rejected as the benefits to the Scheme, its members and consumers does not justify the cost.*

**Take a more proactive approach to members providing leadership on best practice complaint resolution procedures and ensuring compliance, when necessary.**

This recommendation is generally accepted and much of the suggested actions are already underway.

The following specific recommendation is fully accepted with some minor modification:

- it is recommended that the Scheme focus on ensuring members have taken a proactive approach to increase awareness and accessibility of dispute resolution for consumers, particularly those who are disadvantaged. One measure which may be useful is to encourage Scheme members to include a link to the FDRS website which outlines what a consumer should expect from the internal complaint process, and what their options are.
  - *Comment: To a great extent this is already being done.*

*When a complaint is received at the Scheme the member's internal complaint process is checked and if found deficient the member is advised accordingly. We also check financial advisers' disclosure documents to ensure they contain the correct information about the available complaints processes.*

*I disagree that currently we don't have the resources to effectively monitor and promote best practice in internal complaint handling. Our twice monthly webinars have delivered numerous sessions on complaint handling. I also have presented many times to adviser groups and other financial service providers on good complaint processes (and why they are important). It is one of our major focuses.*

*I agree that members should be encouraged to provide a link on their website to the Scheme and information about making a complaint. However, it should cover all client types and does not need to particularly focus on disabled clients – see further comments on this point in the Accessibility section of the Benchmark Principles Recommendations. Many of our members already have a link on their website to the Scheme.*

*This was also part of the website audit conducted some months ago. It is planned in 2019 to undertake another member website complaint information audit. It will have a focus on members who are not financial advisers. This is because in my experience most financial advisers are very aware of their obligations in relation to complaints whereas some other Scheme members are not.*

*In early 2019 we will contact all members and provide them with our logo and ask them to put it on their websites and link it back to the Scheme.*

**Tighten up the role and function of the Advisory Council to provide further level of independence for the scheme.**

It is agreed that this recommendation is something that needs to be explored further.

- The role of the Advisory Council needs to be reviewed.
  - *Comment: I do not entirely agree with this recommendation as the Reviewer has not been clear on the changes he is recommending and why. However, a review of how the Advisory Council operates is a valid suggestion and will commence after the AGM later this year.*

*Having said that I would like to clarify how the Advisory Council currently operates as the information in the Review Report about this is incomplete in some areas.*

*Appointments to the Advisory Council are made by the FairWay Board upon recommendation of the Scheme's Client Director. Currently the Council consists of the same representatives that were appointed at its inception. They include two industry representatives and two consumer representatives. The 2019 AGM is being held later in the year and will quite likely see some changes to the Council members to better reflect the current Scheme membership.*

*All members of the Council (not just the Chair) receive all my reports that are provided to my manager, the Fairway Senior Management Team and the FairWay Board. These include monthly operational and financial reports.*

*Any questions that arise, which is uncommon, are directed to me and I refer them to the FairWay management and provide the response to the Council.*

*The Council also refers questions and recommendations to the FairWay Board and to the best of my knowledge all of the Council's recommendations have been implemented.*

*Therefore, I am of the opinion the recommendation contained in the Benchmark Principles section on Independent and Fairness (Page 14) that "the Advisory Council have more ability to consider information and data being received by the client director, so it can confidently advise the Board on the operation of the scheme according to the benchmark principles" is being primarily already met.*

*However, the Reviewer's observations that the role of the Council and its interactions with the FairWay Board are unclear does need to be addressed. This will be part of the review of the Advisory Council role which will commence after the 2018 AGM.*

*It should also be noted that the drafting of new Scheme Rules will change some of the role of the Council, specifically in relation to systemic issues and serious misconduct reporting.*

### **Develop a process Manual**

This recommendation is fully accepted.

- Create a process manual to increase consistency of approach.
  - *Comment: This process has commenced with the mapping of our complaints processes and will continue and include the membership area and adjudication referral processes. Completing is due by early 2019.*

### **Ensure scheme is adequately resourced to ensure areas of priority are achieved.**

This recommendation is accepted and actively being addressed.

- FairWay will need to carefully consider the resources available to FDRS scheme.
  - *Comment: Firstly, there needs to be a clarification of a statement made on Page 14 in the Benchmark Principles Recommendations section.*

*The Reviewer states “FairWay Resolution Limited sets the FDRS annual budget through a mix of fixed and variable levies. The variable levies element is calculated using the actual number of complaints considered by FDRS in the previous year.” This is not entirely accurate.*

*There are two ways the Scheme charges members. One is an annual membership fee that is based on a number of factors. These include administration of the membership and the estimated time/cost needed to assist clients of members with early enquiries, that the member is not charged for. The second is a complaint fee. This is a set fee the level of which is determined by the level of Scheme intervention needed. For example, an early resolution costs less than a formal adjudication.*

*The Scheme is sufficiently resourced for its current size. The budget calculations for the following year are well underway and the recommendations of the Reviewer have been taken into consideration.*

*The Scheme is also backed by Fairway Resolution which means when an unplanned increase in activities (such as an increase in complaints) occurs there are sufficient financial and staffing resources to address this occurrence.*

## **Benchmark Principles - Recommendations for Consideration**

The Reviewer also made a number of specific observations and recommendation on the Scheme's compliance with the Benchmark Principles. These Principles are contained in the Act and are:

- Accessibility
- Independence
- Fairness
- Accountability
- Efficiency
- Effectiveness

As mentioned the Reviewer added 'User-Focused' to the Accessibility benchmark which is not referred to in the relevant section of the Act that applies to the approval of a Scheme. I also note that the Reviewer has combined the requirements of Independent and Fairness for recommendations in these areas.

Following are my comments in relation to each of the recommendations.

### **Accessibility**

Recommendations and comments:

- Add 'User Focused' to the scheme rules principles.

- *Comment: Disagree with recommendation.*

*See previous comment. 'User Focus' is not part of the required Benchmarks but could be included in an overview description of the Scheme.*

- Ensure processes are responsive to people with disabilities and learning and/or cultural barriers.

- *Comment: Partially agree with recommendation.*

*The Scheme processes and facilities are currently sufficiently responsive to the needs of people with disabilities and learning difficulties when the demographic of potential users is taken into consideration. The Scheme provides resources for consumers from various cultures. Further, as part of FairWay it has access to other services to meet the rare need not already covered.*

*The Scheme also monitors all feedback from consumer groups and via the FairWay Communications Team the Scheme website and other correspondence is constantly updated as required to meet the needs of the users of the system.*

- The Board should continue with its focus on raising the profile of FDRS and the services it offers to consumers and members, with a particular focus on users who are under-represented. Socio-demographic information gathered should be compared with the equivalent statistics produced by Statistics New Zealand and

where there are identified areas of under-representation, work should be undertaken with relevant representative groups on how best to remedy this issue.

- *Comment: Partially agree with recommendation*

*I agree that raising the profile of the Scheme must continue. I disagree with the recommended methods of how to do so for users who are underrepresented.*

*The suggestion to gather socio-demographic statistical information from Statistics New Zealand and then compare this to the users of the Scheme to determine what areas are underrepresented is flawed. The socio-demographic statistics available from Statistics New Zealand is of a general population nature. It does not provide information on the clients of the Scheme members.*

*A better method, in my opinion, is to ensure that all members' clients are made aware of their right to raise a complaint and have that complaint dealt with by an independent body. My comments below cover this point.*

- The Board should revise the rules for providers to promote the scheme, beyond having it simply on their website and disclosure documentation.

- *Comment: Agree with recommendation.*

*This will be part of the Scheme Rules review and can be easily addressed by reference to the Standard AS/NZ 10002 2014 Guidelines for Complaint Handling in Organisations.*

- FDRS should set and monitor standards of complaint handling against which providers will be expected to conform.

- *Comment: Partially agree with recommendation.*

*I agree that the Scheme should be checking a member's complaint handling process once a complaint (or enquiry) is received. This is the current process and in my view, is sufficient.*

*The review of the Scheme Rules will consider including a clearer requirement for members in relation to their internal complaint process to bring it into line with the AS/NZ 10002.*

*However, it should be noted that The Act does not state that setting and monitoring standards of internal complaint handling it is the role of an external dispute resolution. In my opinion, this is an area that is better covered by legislation and codes of practice.*

*To undertake a wider role, such as providing a compliance rating as suggested by the Reviewer, would be costly and cause a major drain on Scheme resources. It is also a role not undertaken by other dispute resolution schemes.*

- Create a clear FDRS branding which is separate from FairWay. For example, letterheads with both FairWay and FDRS may create confusion for consumers.

- *Comment: Agree with this recommendation*

*Since September 2018 there has been a clearer separation of the FairWay and Financial Dispute Resolution Service brand, for the provision of alternative financial dispute resolution services as per the Act.*

*The Scheme website, annual report, letterhead (when used), business cards and appearances at industry events all now carry separate branding. There is a dedicated Scheme telephone number and email address along with full time staff dedicated to the Scheme.*

*However, it is important that the Scheme is also known to be part of FairWay Resolution as this provides a reassurance that the Scheme has the ability to meet a growing need and carries a great deal of dispute resolution expertise. Put simply being part of FairWay is of benefit to all users of the Scheme.*

- *Additional comments:*

*I agree with the Reviewer's observation on Page 7 of his report, that as the Scheme only has 16% of the market share "...any raising of consumer awareness of the schemes would need to take into account the relative size of the schemes and their ability to resource promotion accordingly."*

*I also agree with the Reviewer's suggestion on Page 11 "When a complainant makes a written complaint, they are provided with information about the complaint process and advised of their rights. They are also provided with information to allow them access to the appropriate tribunal or court, in the event it is outside of jurisdiction. It would be useful for FDRS to have this clearly explained on its new website, under 'How we work'."*

*This will be added to the Scheme website.*

*It is pleasing to see that the Reviewer clearly indicates the Scheme processes are easy to understand and use.*

## **Independence & Fairness**

Recommendations and comments:

- The Board should continue to ensure the scheme adjudicator bases decisions on what is fair and reasonable in all the circumstances. However, it should produce guidance, and/or host a webinar for providers, on the fair and reasonable test and how it is applied to decisions.

- *Comment: Agree with recommendation (with modifications)*

*As the Reviewer points out decisions made by the Adjudicator are based on the law, industry practice and what is fair and reasonable. I disagree that a*

*focus needs to be just on fair and reasonable as this is not how formal decisions are made.*

*However, I do agree with the Reviewer's suggestion on Page 12 of his report that "It would be useful for FDRS to adapt the information on the website about the role of the adjudicator and the adjudication process." This information should cover all aspects of the process the adjudicator follows and be included on the Scheme website and other explanatory information. In particular, when a complaint is referred to the adjudicator for a decision. This would assist the parties in presenting their arguments.*

## **Accountability**

Recommendations and comments:

- Revision of terms of reference for Advisory Council to be an external body to encourage ongoing improvement and better outcomes across the system.

- *Comment: It is agreed this recommendation needs to be explored further.*

*See my previous comments in this recommendation.*

- *Additional comments:*

*I agree with the views expressed in the first part on Page 15 of the Reviewer's report in relation to the current process for reporting.*

*I do agree that the Scheme could consider revising the measures to capture information on: provider focus; satisfaction surveys by type of member; and responsiveness of members to FDRS recommendations (excluding binding decisions).*

*I do not agree for reasons previously stated (and that the information is not required by the Financial Markets Authority), that the Scheme needs to capture information on customer focus; service usage by socio-demographic breakdown compared to information from Statistics New Zealand; customer satisfaction (by socio-demographic breakdown); and unprompted and prompted awareness.*

## **Efficiency**

Recommendations and comments:

- The Board should invest in an intelligent system which routinely collects and records financial disputes to assist the scheme to report against its performance, objectives, quality standards, targets, general data including outcome trends and any issues arising.

- *Comment: Agree with this recommendation.*

*See my previous comments in 'Develop Systems for more effective data collection'.*

## Effectiveness

Recommendations and comments:

- The Board should consider tightening up the rules and processes for systemic and serious misconduct issues.
  - *Comment: Agree with this recommendation.*

*There is a new definition of systemic and serious misconduct in the Financial Services Legislation Amendment Bill which will dictate how these issues are addressed in the changes to the Scheme Rules.*

## Conclusion

The Reviewer has found that Financial Dispute Resolution Service complies with the provisions as set out in s.52 as mandatory considerations for approval and s.63 of the Financial Service Providers (Registration and Dispute Resolution) Act 2008.

The Reviewer has also made a number of recommendations to improve the Scheme. He has not stated these are required for renewal of the approval by the Minister of Commerce and Consumer Affairs for Financial Dispute Resolution Service to operate as an external dispute resolution scheme.

However, all of the Reviewer's recommendations are accepted in principle with some modifications, as set out in this report, to make their implementation practical and efficient.

Therefore, in my opinion the approval for Financial Dispute Resolution Service to operate as an external dispute resolution scheme under the Financial Service Providers (Registration and Dispute Resolution) Act 2008 should be confirmed.

I would welcome any discussion on the report.



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